IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.141 OF 2005

IN

SUMMARY SUIT NO.1854 OF 2003

Prashant C. Desai. .... Plaintiff.

vs.

Hemen Satish Sanghvi. ... Defendant.

Mr.J.Raut i/b. Little & Co., for plaintiff.

Ms.J.M.Sidhwa i/b. Manoj Bhatt, for Defendant in support.

CORAM: D.K.DESHMUKH,J.

DATED: 28th April,2005

P.C.:-

1. This is a Notice of Motion taken out by the defendant for setting aside Ex-parte decree. It appears from the record that the defendant could not file appearance because of the mistake of his Lawyer. The defendant is also agreed to deposit amount of Rs.1,00,000/- (Rupees One lakh only) in this court. Considering that it is an ex-party decree, in my opinion, the following order would meet the ends of justice:-

(i) The notice of motion is granted in terms of prayer clause (a) subject to condition that within a period of six weeks from today, the defendant shall deposit in this Court, amount of Rs.1,00,000/- (Rupees One lakh only) with due notice to the plaintiff and shall pay to the plaintiff Rs.5000/- as and by way of costs of this Notice of motion

(ii) The Prothonoary and Senior Master of this Court shall permit the plaintiff to withdraw the amount on furnishing an undertaking, undertaking to this Court to re-deposit the amount, if so directed by this Court and on such terms and conditions as may be directed by this Court.

(iii) The plaintiff shall take out summons for judgment within a period of four weeks from the date on which the amount is deposited. The disposal of the amount shall be governed by the order that may be passed in Summons for Judgment.

(iv) If the defendant does not deposit the amount within the aforesaid period and does not pay costs to the plaintiff, this notice of motion shall be treated as disposed of.

Notice of Motion disposed of.